

>>> "Nicholas Prakken" <NJPRAK@kalamazoo.com> 8/18/2005 4:33 PM >>>

As a Magistrate that currently deals with officer's statements offered in lieu of appearance I can attest to the fact that this provides for an efficient means of handling civil infraction cases. It removes the problem of an officer being on vacation or otherwise unavailable for a hearing. It also saves the various 22 police agencies in Kalamazoo County a significant amount of overtime money. When officers receive \$75 to \$100 for an appearance out of their schedule the amount quickly adds up.

The concerns that have previously been stated deal with the time delay for resolving the civil infraction. This is not a problem in our county as we do not afford the respondent an opportunity to review the statement prior to the hearing. That would be akin to allowing the respondent a discovery hearing to find out what the officer is going to say prior to an informal hearing. At the time of the hearing the officer's statement is read and then testimony is taken from the respondent. If the respondent is not satisfied with the hearing he/she always has the right to appeal to a formal hearing. Also if there is not sufficient information in the officer's written statement it is likely that the respondent will be found not responsible. This is a chance the officer takes. As always, the officer has the right to appear even if his appearance is waived, should the officer so desire.

When a respondent contacts the court to set up a hearing they are asked if they wish to have the officer present or if he may file a written statement. Respondents are unequivocally advised that it is their option. I don't think this creates a problem in the waiving of a respondent's rights. If he/she is unsure the clerk staff advises them to have the officer present.

Statements at this time account for approximately one-third of the hearings for speeding infractions. The statements used for speeding tickets are of a format that meets the requirements of the statute and case law and provides the court with a basis for the traffic stop. The respondent then testifies as to his/her position and a decision is made. Since the verification of the equipment and the manner of detection are included in the statement there does not appear to be a problem.

As this has been successfully used in Kalamazoo County for at least 15 years without challenge or issue, it would seem to be a viable means of handling some of the informal hearings. My only concern is the provision for allowing a respondent to review the statement prior to the hearing

and then decide to have the officer present. Because the proposed court rule permits a review at or before the commencement of the informal hearing, this could likely amount to a scheduling nightmare that will detrimentally affect both the officer and the respondent. This I don't believe to be a necessary step.